The Planning Inspectorate

Appeal Decisions

by Brian Cook BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 06 January 2022

Appeals A and B: Appeal Ref: APP/Q3820/C/19/3234453 (Appeal A) and Appeal Ref: APP/Q3820/C/19/3234454 (Appeal B)
Land at Fairhaven, Fernhill Road, Pound Hill, Crawley

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Mr John Ellis (Appeal A) and Mrs Sarah Ellis (Appeal B) against an enforcement notice issued by Crawley Borough Council.
- The enforcement notice was issued on 8 July 2019.
- The breach of planning control as alleged in the notice is without planning permission, within the last 10 years, the stationing of three mobile homes the approximate position being shown for identification purposes only, in blue and labelled "C", "D" and "E" on the plan (Plan B) and the photographs (Photo A) attached to the notice.
- The requirements of the notice are:
  - i) Remove the three mobile homes outlined in blue and identified as "C", "D" and "E" on Plan B.
  - ii) Cease the use of the Land for the stationing of more than the two mobile homes the approximate position being shown for identification purposes only, in orange and labelled "A" and "B" on Plan B attached to the notice.
- The period for compliance with the requirements is three months.
- Appeal A is proceeding on the grounds set out in section 174(2)(a), (b), (c), (d) and (g) of the Town and Country Planning Act 1990 as amended. Appeal B is proceeding on the grounds set out in section 174(2)(b), (c), (d) and (g) of the Town and Country Planning Act 1990 as amended.

Decisions

Appeals A and B: Appeal Ref: APP/Q3820/C/19/3234453 (Appeal A) and Appeal Ref: APP/Q3820/C/19/3234454 (Appeal B)

1. The enforcement notice is quashed.

Applications for costs

2. Applications for costs have been made by the appellants against the Council. These applications are the subject of a separate Decision.

Procedural matter

3. On reviewing the evidence it was clear that these appeals would turn either on the flaws in the notice or on the legal grounds of appeal. In the circumstances, the parties were advised that no site inspection would be required and neither the appellants nor the Council raised an objection.

The notice

Background

4. While there is a long and complex planning history to the site, particular decisions have established the principles of what is permitted there. Not all of the plans of the land to which they relate have been submitted in evidence and some assumptions have been made in that respect.

5. The first two date from the 1990s. On 19 January 1996 a notice (the 1996 notice) was issued alleging a change of use of the land from a nil use to use as a travelling show persons' site comprising residential use, and storage, maintenance and repair of fairground equipment, involving incidental operational development. Although the plan of the land to which the notice relates has not been provided, in context, I take it to be the same as that shown on Plan B attached to the notice subject of these appeals.

6. On 22 February 1996 an application for planning permission (Ref: CR/96/0102/COU) was made in respect of what I take to be the same land. The development applied for was the change of use of land to use for travelling show peoples quarters. Planning permission was refused.

7. Appeals were lodged against both the issue of the notice and the refusal of planning permission. Following an Inquiry, planning permission was granted for the development applied for (the 1998 permission) but the notice was upheld, with corrections and variations that are not material to these appeals.

8. The Council granted a certificate of lawful use or development (LDC) confirming that on 11 July 2017 the use of land for the stationing of two mobile homes for occupation by two independent families of travelling show people was lawful by passage of time. The drawing to which the LDC relates confirms that the two mobile homes are those identified as A and B and coloured orange on Plan B attached to this notice.

9. A further two planning permissions have been granted. In 1999 permission (the house permission) was granted for a three bedroom dwelling on the front (northern end) of the land (Ref: CR1998/0772/FUL). The Council confirms that this permission development has been commenced but never completed. Later, a further permission (the garage permission) was granted for the erection of a garage for temporary residential use (Ref: CR/2000/0218/FUL) to provide accommodation while the main house was built. A subsequent permission approved unauthorised variations to the approved garage permission.

Control over the use of the land

10. Condition 3 of the 1998 permission restricts any residential use of the land to the summerhouse at the southern end of the site. Although the meaning of '…while on the site whatsoever' is not wholly clear to me, that there shall be no siting of any caravan or mobile home for residential occupation is unambiguous and applies across the whole of the permission land in my view.

11. However, condition 4 permits the use of the site for '…storage, repair and maintenance of fairground equipment and vehicles and caravans belonging to the occupier of the site and his/her family only, together with their residential use of the summerhouse, and for no other purpose' (emphasis added).

12. The wording of this condition may cause problems of interpretation. Nevertheless, condition 5 makes it clear that the area of the site that may be used for condition 4 purposes is that to the south of a dividing bank shown on a drawing that has not been submitted in evidence. However, there is no dispute between the parties or doubt in my mind that the land on which the three mobile homes attacked by the notice are stationed lies to the north of this bank.

13. The house and garage permissions draw forward the spirit, if not the exact wording, of the 1998 permission conditions 3, 4 and 5. The approved house permission plan provided in evidence is not in colour. How reference to 'site' in the conditions should be interpreted is therefore not certain.

14. Finally, the appellant has not disputed the Council's claim that the notice remains in force to the extent that the requirements are not inconsistent with the 1998 permission. Requirement 8 may have continuing effect. It requires the removal of, among other things, mobile homes and caravans associated with the residential use of the land (which an earlier requirement says should cease) and to thereafter refrain from bringing any mobile homes or caravans onto the land (emphasis added). I do not need to comment on whether this requirement could still be enforced and do not do so.

Can the notice be corrected without injustice?

15. The breach of planning control alleged is, in simple terms, the stationing of three mobile homes. The courts have held that a notice cannot simply allege the stationing of caravans or mobile homes. The purpose for which the caravan/mobile home is used must be specified in order to assess, and dispute as necessary on appeal, whether there has been a material change of use of the land. It is particularly important in this case since caravans/mobile homes may be stationed on parts of the notice land for certain purposes by virtue of the 1998 permission and the land edged red in the notice includes the whole of the 1998 permission land.

16. The breach of planning control must therefore be corrected in order to define the terms of the application deemed to be made by virtue of the Appeal A appeal on ground (a). However, the powers available in s176(1) of the Act may only be used to make a correction if doing so would not cause injustice to either party.

17. In light of the reasons for issuing the notice, I share the appellants' view that the Council may consider the three mobile homes to be used as residential accommodation. However, the Council has not taken the opportunity available through its appeal statement to confirm this. Furthermore, parts of its evidence maintain the uncertainty as to its intentions in this regard.

18. For example, the recommendation of the expediency report is to issue a notice in respect of the unauthorised stationing of and residential occupation of three mobile homes. Two mobile homes on the site are acknowledged to be lawfully residentially occupied. However, of the three to which the recommendation relates, only one is described as then being occupied while the other two are noted as being unoccupied but having the potential to be so. Although the implication is that there is the potential to be residentially occupied, I cannot be certain. That is not a reasonable basis on which to exercise the s176(1) power. It may therefore cause injustice to the Council if the notice was

corrected to allege the purpose for which the mobile homes are stationed to be residential occupation as it is not clear that this was the Council's intention.

19. There may, however, be no injustice to the appellants from such a correction. While the evidence is provided within the case made on ground (a) rather than grounds (b) or (c) the appellants explain why this is not so. An argument has therefore already been made on either ground (b) or ground (c).

20. I have also considered if the breach of planning control might more accurately be stated as a failure to comply with one or more of the conditions attached to one of the permissions. The courts have held that it is open to an Inspector on appeal to make such a correction subject to there being no injustice to either party. That may obviate the need for the Council to specify the use to which the mobile homes are put given the way the conditions are framed.

21. Quite apart from the difficulty of me determining which of the various permissions referred to above should be identified as having been breached, as I have suggested, the wording of some of the conditions is open to interpretation. This is not something that either party has engaged with in their statements although the appellants have given an indication of how they interpret some of the conditions. However, the case put on ground (a) would likely be completely different. Such a correction would therefore cause injustice to the appellants, if not to the Council as well.

22. In conclusion therefore the way the breach of planning control alleged has been drafted renders the notice invalid on its face. While the courts encourage Inspectors on appeal to resolve such issues and correct the notice, the power to do so available in s176(1) of the Act may only be used if there would be no injustice to either party. As set out above, the two available corrections would cause injustice to one party or the other. The notice is therefore incapable of correction.

Conclusion

23. For the reasons given above I conclude that the enforcement notice does not specify with sufficient clarity the alleged breach of planning control. It is not open to me to correct the error in accordance with my powers under section 176(1)(a) of the 1990 Act as amended since injustice would be caused were I to do so. The enforcement notice is invalid and will be quashed. In these circumstances the appeals under the various grounds (a) (Appeal A only), (b), (c), (d) and (g) as set out in section 174(2) of the 1990 Act as amended and the Appeal A application for planning permission deemed to have been made under section 177(5) of the 1990 Act as amended do not fall to be considered.

Brian Cook

Inspector